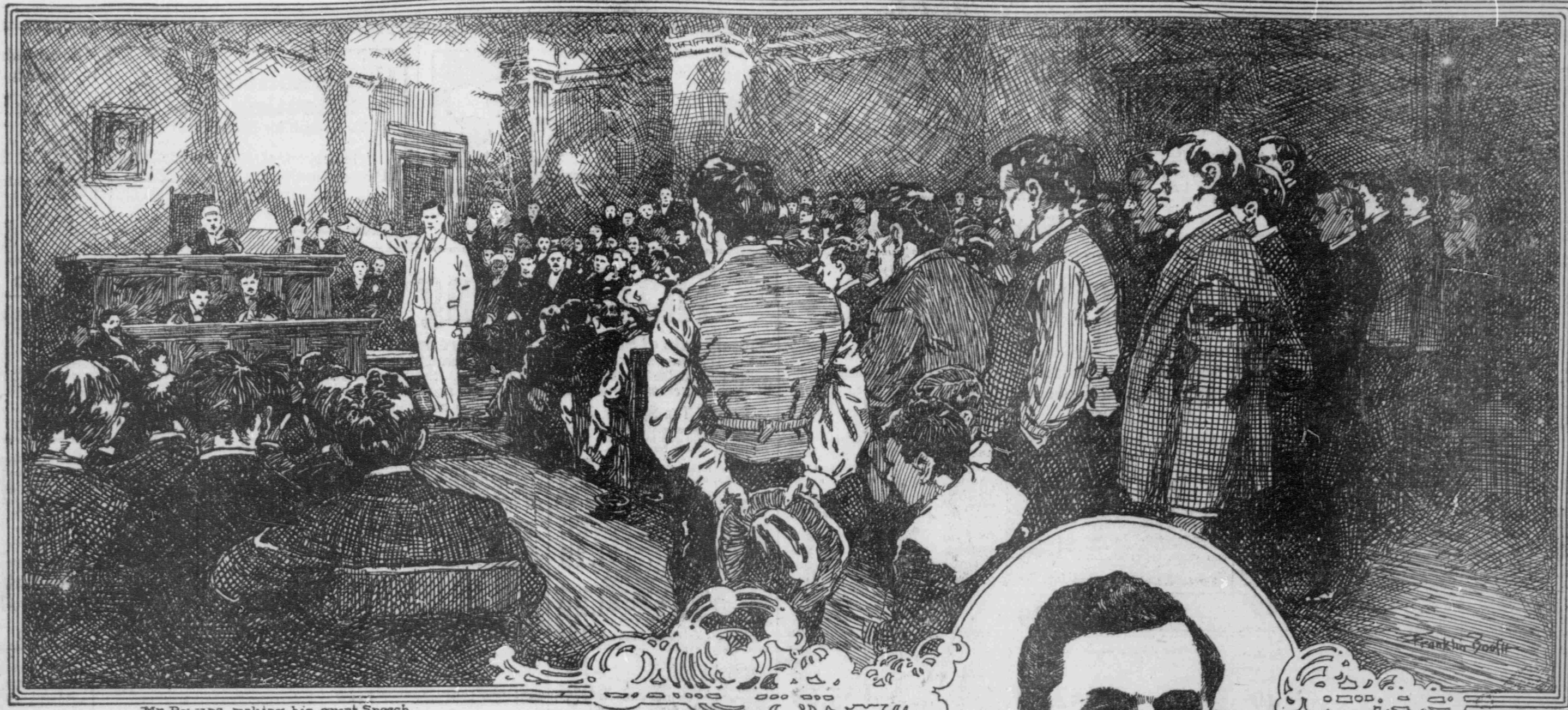


# A Man's Plea For His Life.



Mr. Powers making his great speech.

## Spirited Defense Made By Caleb Powers in Effort to Convince Kentucky Jury of His Innocence in Goebel Case.

SINCE the adoption of a code of criminal law which provided the right of a trial by jury it has been the privilege of the accused to speak in his own defense. Even in the days in England when an attorney for the defense was not permitted to address the jury and the summing up of the judge was the only softening effect of arraignments by prosecuting lawyers; when men were hung for forgery, stealing and many lesser crimes, there was mercifully provided an opportunity for the prisoner to speak in his own defense. It is true that his ignorance of law and inability to point out defects in the testimony was a terrible handicap in the fight for life, but it gave men wrongfully accused the chance to plead their innocence and sometimes prevented the frightful miscarriages of justice which are a black stain on the name of England.

In recent years the privilege has not been frequently exercised. Prisoners have been able to secure the services of men whose abilities were entirely directed to a cultivation of the art of appealing to the common sense or to the sympathies of the men trying the cases and the accused has usually nothing to say in his own behalf. The exceptions to the rule are generally striking and have on more than one occasion swayed juries whose decisions had been formed against the man pleading his own cause. The latest and most eloquent demands for justice is the address of Caleb Powers to the jury trying him for alleged conspiracy in the murder of William Goebel, Democratic candidate for governor of Kentucky.

The reading public is familiar with the tragic murder of Senator Goebel in the State house yard at Frankfort, Ky., on January 30, 1900, and the many indictments of persons of high and low degree as principals and accessories before the fact in the commission of the crime. It will be recalled that Caleb Powers was elected secretary of state on the Republican ticket, and occupied the office before his arrest. He was twice tried on the charge of conspiracy in the plot to murder Goebel, and was twice convicted and sentenced to life imprisonment. On the third trial a verdict of guilty, affixing the death penalty, was brought in. It was at the close of the third trial that Powers made his great plea.

### Democratic Opinion of Case.

It has been charged that politics figured very extensively in his trials. It is admitted that the indictments were secured in a court presided over by a Democratic judge; the officers were Democrats, and the juries were made up of Democrats. This political significance was pointed out by the accused and dwelt upon at length in his powerful prayer to the jury to try the case on its merits and the actual testimony given. Col. W. C. P. Breckinridge, a leading Democrat of Kentucky, in an editorial in the "Morning Herald" on the verdict said:

"Powers was guilty of bringing the mountain men to Frankfort; there was no casual connection between this and the assassination of Goebel. We believe he was innocent of complicity in that crime, but his connection with the one act has been used as a pretense for his conviction of the crime. To whom the rewards (for his conviction) will be paid is not yet known; they have been as well earned as were the historic thirty pieces of silver.

"On the floor of the House of Representatives General Butler destroyed the public career and drove into painful exile an eloquent and much applauded counsel and politician, General Brigham, who had been concerned in the trial of Mrs. Surratt for the assassination of President Lincoln. 'I decline,' he said,

to yield to him who compassed the murder of an innocent woman.' It may be that in the not remote future, in the face of some ambitious participant in the prosecution of Caleb Powers a similar retort will be flung."

### Scene at the Trial.

It had become known that Powers would speak in his own behalf at the conclusion of the trial, and the courtroom was thronged. In spite of the excessive heat the audience hung on his every word, and lost no part of the speech which, commencing one evening, lasted through the following day. His youth and eloquence won for him the sympathy and belief of the spectators, and the pathos of his closing words left scarcely a dry eye in the room; many of the jurors were in tears when he concluded.

Notwithstanding the impression he made on the jury, after a deliberation lasting over night and until the middle of the next day, they brought in a verdict of guilty and recommended the death penalty. The case has been appealed and will probably be brought before the Supreme Court of the United States.

It is thought unlikely that any verdict but acquittal will be secured in the highest court. The testimony was shattered by Powers in his masterful argument. The speech is as strong a plea of a man defending his own life as can be found in modern criminal proceedings.

In justification of his determination to speak in his own behalf Powers told the jury that he was exercising the privilege vouchsafed to every person in the Commonwealth accused of crime, because he felt that he had not received justice at the hands of his countrymen. That for more than three long years he had been forced to lie in the jails of the State, classed as a criminal, branded as a murderer, and denounced as an assassin. Continuing, he said:

### Facing Powerful Enemies.

"I have borne in silence and with what fortitude I could, these grave charges, together with two adverse verdicts at the hands of my fellow-countrymen. I now feel that I owe it to myself to be heard. Over three years ago I was torn from a high official position, to which I had been elevated by the people of this great Commonwealth; thrown into jail and charged with the commission of an atrocious and cowardly crime. The Legislature of our State, in the excitement of the hour, and actuated by motives of hatred and revenge, appropriated \$100,000 of the people's money with which to prosecute me, \$25,000 of which sum was set aside for the investigation of clues; in other words, that amount was to be paid to detectives to furnish the needed proof. In addition to that, a large sum was offered and hung up as a tempting morsel for my conviction, right or wrong. With such inducements and surroundings in this case, is it any wonder that Weavers have wandered from the distant peaks of Colorado to get their slimy hands into that filthy sum? Is it any wonder that perjured scoundrels of the brand of Noaks and Anderson found their way to the witness stand during my trials, and swore to prepared and infamous falsehoods against me? Is it any wonder that weak and base humanity of the character of Golden and Culton began to swear, and continue to swear, for immunity?"

"Is it any wonder that the assassin-hearted Cecil, after having wandered this weary world around from Kentucky to Kansas, from Kansas to California, from California to Kansas, and from Kansas back to Kentucky, should finally find his way to the home of the prosecuting attorney in this case; there given a comfortable night's lodging—'par noble fraterne' from there he taken before the grand jury the following

morning to tell such a story as would continue to him his liberty under the forms of law? Is it any wonder that the weak and villainous Youtsey, after having spent more than two years in the penitentiary of this State, should emerge from that living tomb, when he sees, or thinks he sees, through his testimony a ready chariot to the green and inviting fields of freedom? We should not be surprised at such happenings, they are the natural outgrowth of such conditions and inducements."

### Blot on State's Fair Name.

Appealing to the jury to consider the effects of an unjust conviction, Powers said:

"I beseech you to never let it be recorded in the pages of Kentucky history, a State whose record is already black enough with crime, that a jury of that State, in the morning of this new century, the best century in all this world's history, with all the achievements of the mighty past thrown at our feet, with all the deeds of noble manhood and splendid womanhood to light our path of duty—let it be said, gentlemen, that in response to the wild clamor for revenge on the part of interested detectives, known perjurers, and blatant partisans, you were induced to rob a young Kentuckian of his good name, put the stripes of a felon around his limbs and hurry him off to a living death for life. And all of this, gentlemen, with the eyes of the civilized world looking on.

"This trial, gentlemen, is not merely of today. It will live as long as our State's doings are read. This trial is not over when this jury is dismissed and you start for your homes. So far as my individual liberty is concerned, that will have been settled. But at its conclusion will begin the trial of you, gentlemen, and this court, before the great bar of public opinion. Yes, that trial has already begun. And ultimately, gentlemen, the integrity of the courts of our State and their reputation for fair dealing will be determined in accordance with the merits of the case. The public, and posterity, may have its deductions made for a time, but for a while, blind the eyes of men; but their senseless and distorted judgment, but in the end their judgment will be clarified, and a just and impartial conclusion will be reached concerning the merits of this controversy."

### Abuse of Circumstantial Evidence.

The accused cited incidents to show that circumstantial evidence had frequently, when accepted too readily, led to the conviction of many innocent people.

"Gentlemen," he said, "the history of this world is full of such examples. And our lawmakers, in their wisdom, have said that before you can take a man's life or his liberty for life on circumstantial proof, the evidence introduced by the Commonwealth must be such that the crime cannot be accounted on any other hypothesis than the guilt of the accused."

"Dreyfus was sent to Devil's Island on circumstantial testimony and perjured proof. The judiciary of France is disgraced forever on account of it. On circumstantial testimony, Samuel Arnold, an innocent man, was sent to the Dry Tortugas for life for alleged complicity in the assassination of Abraham Lincoln. Dr. Mudd met a similar fate. On circumstantial testimony and perjured proof, Mrs. Surratt, an innocent woman, was hung for alleged complicity in the assassination of Abraham Lincoln. America will never outlive it. Beware, gentlemen, of circumstantial testimony. It is untrustworthy; it misleads; it lies; it deceives."

Powers discussed the testimony brought forward in the trial and reminded the jury that a verdict must be returned on the testimony given. He recalled to the court that the charge made against him was entering into a conspiracy with the men who had shot Goebel. There were only a few men accused at different times of being direct principals in the assassination, so the prisoner considered the names of those who had been indicted.

### Analysis of Evidence.

"I say they have charged me with procuring Harlan Whitaker, Dick Combs, Henry E. Youtsey, Berry Howard, and Jim Howard to fire the fatal shot that resulted in the death of Senator Goebel, none of whom came with

the mountain crowd. That is what they charge me with. If I did procure those men to shoot Senator Goebel, I am guilty. If I did not procure those men to kill Senator Goebel, then I am not guilty, although the mountain crowd came to Frankfort, and although the militia was called out, and although there was a great deal of excited speech and a great deal of reckless talk done at Frankfort, during those stormy times. Now, let us see. Did I procure Dick Combs to shoot and murder Mr. Goebel? What is the testimony in this case? Dr. Prewitt told you that Dick Combs was in the adjutant general's office when the fatal shot was fired. The testimony in this case is that I had never laid eyes on Dick Combs until after he was arrested and lodged in the Franklin county jail, charged with this crime, as I was. The testimony is that I never saw Dick Combs, had no communication with him, had nothing to do with him, and did not know him until after he was lodged in jail, after I had been lodged in jail. Therefore the conclusion is inevitable that I did not conspire with, aid, counsel, advise, or procure Dick Combs to murder Senator Goebel. There can be no doubt about that, and that much more of the indictment is wrong, if the testimony for the prosecution in this case can be relied upon.

"Now let us see who else. They charge in this indictment that I procured old man Harlan Whitaker to murder Senator Goebel. That is charged in the indictment, but the testimony is that I never laid eyes on him until after he was arrested and until we were carried to the Louisville jail for safekeeping after Senator Goebel had been shot. That is the testimony in this case. There is nothing in the whole record to contradict it. So if the testimony can be relied upon, I am not guilty. Harlan Whitaker to shoot Senator Goebel. And besides that the prosecution now says that Harlan Whitaker had nothing to do with the killing of Goebel.

### Testimony Proved Innocence.

"Then they charge me in this indictment with procuring old man Berry Howard to murder Senator Goebel. That is what they charge me with and that is what you gentlemen are trying me for. That is the thing upon which you are asked to take from me my life by these able gentlemen in their excited arguments. What is the testimony in this case? The testimony in this case is that I had no communication with him; that I did not procure him to do anything, and besides that, Berry Howard has been acquitted of the charge of having fired the shot, or of being present, aiding or abetting those who did fire the fatal shot that resulted in the death of Senator Goebel. Then three out of the five named persons I could not be guilty with. Then if I am guilty, I must be guilty of procuring either Jim Howard or Henry E. Youtsey to fire the fatal shot that resulted in the death of Senator Goebel. There can be no escape from that.

"Now did I procure Jim Howard to fire the fatal shot that resulted in the death of Senator Goebel? What is the testimony in this case? Think it over, some four weeks. Think over the testimony that has been introduced on the witness stand in this case and point to a single witness on the part of the prosecution or the defense that said I ever even knew Jim Howard at the time Senator Goebel was shot on the night of January 30, or prior thereto. If you will show me a witness in the whole case who has sworn from this witness stand that I even knew Jim Howard, I will agree right now that you gentlemen shall bring in a verdict of guilty. Show it, Mr. Franklin, and then ask the jury. Point it out at the hands of the jury. Point it out and I will agree that you find me guilty."

### No Conspiracy With Youtsey.

"Then four of the five men named as the principals, that you, Mr. Franklin, charge me with procuring to shoot Senator Goebel, if the testimony can be relied upon, I certainly did not procure. I am not guilty with any unknown man because they have eliminated the unknown man from the case. The

known man has nothing to do with it. Then if I am guilty at all of procuring anybody to shoot Senator Goebel, I must be guilty of procuring Henry E. Youtsey to shoot him. Is not that true?"

The defendant took up the testimony of Youtsey at great length. He showed that it contradicted itself in most important parts. The charge was made by Youtsey that the door leading into his office (that of the Secretary of State) had been left open on the day the murder was committed. The prisoner recalled a large volume of reliable testimony proving that all of the doors were locked on that day. He took up the accusation that a key to the door had been given Youtsey by his brother, and showed from the testimony that only one key was in his possession, and that it never left his possession. He showed further that Youtsey in one statement declared that the key he used had been in his possession for more than a month. In a number of ways he pointed out the falsehoods that stood out in Youtsey's testimony and showed that nothing had been brought forward to connect him with a conspiracy with Youtsey.

In explanation of his motives for accepting a pardon from Governor Taylor, Powers said:

"Gentlemen, I did not believe that I could be protected by the civil authorities in Frankfort. I did not believe that I could get a fair trial if I remained. I knew that my attempt to escape to the mountains was of expedience; I knew the dangers of arrest; I knew how attempted escape would be construed; I knew how a pardon to me in this matter would be interpreted. I was not unmindful of the situation of your consciences. Do justice to this oppressed man."

### "What Would You Have Done?"

"Suppose you had been elected to a State office, as I was elected; suppose that the Republican contestant for governor had been shot down as Senator Goebel was shot down; suppose that you were charged with the assassination of the Republican contestant for governor, and suppose that the Republican press of the State were loud in proclaiming you guilty and were daily and hourly fanning the passions of the people to a blaze. Suppose that the Republican Legislature had appropriated \$100,000 with which to prosecute you; suppose that you were to be carried into the Eleventh district to be tried for the alleged conspiracy; suppose that you knew that in that district you would be tried by a Republican circuit court; that the jurymen who tried you would be summoned by a Republican sheriff, and when they were summoned they would all be Republicans; suppose you knew that you would be tried in that Republican stronghold, while the people were drunk with passion and their blood was hot with rage; and suppose that the prosecution against you had not only at their backs the strong and powerful arm of the Commonwealth, with all its resources; but

and hourly fanning the passions of the people to a blaze. Suppose that the Republican Legislature had appropriated \$100,000 with which to prosecute you; suppose that you were to be carried into the Eleventh district to be tried for the alleged conspiracy; suppose that you knew that in that district you would be tried by a Republican circuit court; that the jurymen who tried you would be summoned by a Republican sheriff, and when they were summoned they would all be Republicans; suppose you knew that you would be tried in that Republican stronghold, while the people were drunk with passion and their blood was hot with rage; and suppose that the prosecution against you had not only at their backs the strong and powerful arm of the Commonwealth, with all its resources; but

people's money at its command with which to purchase testimony against you; and suppose your lawyers that you had employed in the civil suit, and upon whom you relied for council and advice, told you that you had better get away for the time being; that the people of the State were swept off their feet; and that, in time of excitement, people apparently so mad, and their reason is dethroned; and suppose that your lawyer should say to you that you had better get a pardon and get away to save your life until the people came to themselves; suppose you knew that if you did get away, whether you had one pardon or a thousand, and whether you tried escape one time or a million; that you knew within your heart of hearts that you were not guilty of the crime with which you had been charged, and that in the end your good name would be vindicated; suppose all this, gentlemen; I will let each of you, in your own hearts, answer that—what would you have done?"

### Appeal for Justice.

In closing his appeal Powers said: "These mad days, these prosecutions, will soon be over. Any temporary advantage that may be given to either party by a verdict of guilty or a verdict of not guilty will soon pass away. Posterity will judge us by the rightfulness and the wrongfulness of our course and conduct. And I feel, gentlemen, that the angel of justice has been standing upon the very threshold of your hearts since this trial began and saying almost aloud to your consciences: 'Do justice to this oppressed man.'"

"You know I have suffered; I have been in prison nearly four years. You gentlemen have been engaged in this trial not quite four weeks. You have, in a measure, been robbed of your liberty. You have been kept together and had an office over you; have been forced to stay all together and eat at the same table at the same time, and to sleep in the same room. I know that the days have hung heavily on your hands, and that the nights have been long and weary. I know that you have been eager to get back to your homes; been anxious to be with your wives and children. They, too, have been thinking the time long and keeping eager eyes to your approach; they will meet you with open arms and tender caresses."

"It has been a long time to them since they saw you; it has been a long time to you since you saw them; but how short a time compared with over three years, with twelve months in each year and each month having thirty long days and thirty long and weary nights, all alone in a prison cell, with the trash of the earth for your daily companions, and with iron bars and steel walls to mock your very existence. There, in a lone, some cell, filled with foul air and creeping vermin and separated from family and friends, hunted up and stared at

by every vulgar curiosity-seeker in the land; classed and treated as a criminal and branded as an outlaw. Such an existence is a living death; it is a million deaths.

### Man's Inhumanity to Man.

"Gen. Reuben Davis, of Mississippi, once said: 'A prison cell has horrors for me that the regions of the damned have not. The one is the inhumanity of man to man; the other the just punishment inflicted by an all-wise God for the infraction of his decrees.'"

"And should any of you gentlemen be tempted to render a verdict of guilty, and consign me to a living tomb for life, you should weigh well its consequences for us has been stated, the first, the middle, and the last consideration for a jury is the consequence of their verdict."

"I can see my poor mother now, who was unable, by reason of physical infirmities, to attend this trial. She is sitting in her distant home, with a face pale, wrinkled, and careworn from the responsibilities of life and the worries and troubles caused by the unjust prosecution of her son. With a frail and trembling hand she moves back the white hair from her sorrow-ridden brow. She casts her waiting, watery eyes toward the scene of this trial and pleads with you, though far away, to spare her son the burdens of further trials and dishonor. She pleads with you for justice to her son. She begs you not to be frightened away from your plain duty by the cruel invectives heaped upon his head by these gentlemen in the heat of argument. She implores you not to blot the good name of her home and family by a verdict of guilty; not to bring into disrepute and dishonor the name of her dead husband and his offspring; not to hold up in shame and blight the fondest hopes of her heart; not to scandalize the evening of her life by throwing at the feet of her son the commission of such an awful offense; when she knows that he could not be guilty of such a deed."

"She beseeches you to be led alone in your consideration in this case by the lamplight of duty and not be tempted to outrage yourselves and the innocent by political bias, partisan feeling, or party advantage. She begs you not to take her to an early grave in shame and dishonor; not to cut her son down in the days of his youth; not to extinguish the dearest hope of her heart; not to erase every hope of happiness for her and for him; not to bring down her mourning age into a grave of despair; not to take from her that which is dearer than life itself, and put upon her more than she can bear. She asks you not to reward liars, nor put the badge of respectability upon the brow of perjurers by your verdict; not to feed the greed of men upon the lifeblood of her son, or upon the vitals of our Commonwealth; not to walk ruthlessly upon broken homes and bodies; not to poison or kill her peace on earth and blight and ruin her confidence in men; not to murder your own souls and smite your own conscience."

"And my prayer is, gentlemen, that the Giver of Light may remove the mystery surrounding this case and reveal the truth to you as it is. May He point out to you your duty and give you strength to do it."

"If thank you, gentlemen, for your kind patience and indulgent hearing."

### FOR THE SAKE OF EXERCISE.

Senator Cockrell of Missouri went fishing with a friend not long ago. A stone tied to a rope held the boat at the place where the two decided to try their luck. The fish did not bite, so after an hour or two the Senator and his friend returned, the former rowing. He noticed that the boat seemed to be very sluggish in responding to the oars, but had no idea of the reason until the landing was reached. Then the man from whom they had rented the boat said: "Judge, you don't look drunk, and you haven't the smell of liquor on you, but this is the first time I ever saw two sober men pull a boat for three miles with the anchor dragging." "I paid for the boat, didn't I?" replied the Senator testily, not caring to admit his forgetfulness. "Well, then, it's none of your business. If I wanted to get a little extra exercise,"